

**Lake Maumelle Watershed Management Plan
Policy Advisory Council
Meeting Summary
November 15, 2006**

Attendees

See Attachment A.

Introduction

Following roll call, Trevor Clements of Tetra Tech reviewed the objectives for the meeting, relating their context to the overall planning project and schedule. Trevor indicated that the meeting agenda was very full with several action items that will shape the contents of the plan. In order, the meeting covered:

1. Overview of the draft settlement agreement (information item).
2. Allowance of performance standards in development agreements (action item).
3. Conditions for allowing development in Critical Area A (action item).
4. Allowance of Non-Engineering Approach in Critical Area A in the short term (action item).

Since much of the meeting agenda relates to Critical Area A, Trevor next provided a reminder of the PAC's Action to date on Critical Area A: At the September 2006 meeting the PAC reached general consensus, i.e., all but two members supported the motion to delay the decision on development in Critical Area A until pilot projects are completed. The group said at that time it should be determined if stormwater BMPs can be used effectively and if adequate oversight is in place. The group deferred action on the short-term development option in Critical Area A.

Trevor then summarized Tetra Tech's recommendations in the Draft Plan as they relate to Critical Area A. Tetra Tech offered two options for the CAW Board to consider: (A) no development, and (B) very limited development with very restrictive measures and five prerequisite conditions.

The five prerequisite conditions for development in Critical Area A are:

- (1) Overall risks to the lake and intake area are reduced. Through its representation on the PAC, Deltic Timber has indicated that if allowed to develop in Critical Area A, it would adhere to the Plan requirements not only in Critical Area A, but also on land that it owns in other parts of the watershed. In order to reduce overall risks to the lake and intake, both major landowners in Critical Area A must agree to follow the watershed plan requirements on all land they own in the watershed, and in the event they sell their property, must bind all future owners of their land to do the same. The two major landowners in Critical Area A own 41 percent of the developable land in the rest of the watershed, including 37 percent in Perry County, and almost all in Saline County. Given the uncertainty about adoption of local ordinances, such an agreement could help ensure implementation of the watershed plan in a majority of the watershed, while still preserving 70 to 92 percent of Critical Area A in conservation area.
- (2) Major landowners in Critical Area A must work with CAW to identify and obtain lands in other parts of the watershed that meet the land acquisition ranking criteria. The major landowners should sell or donate conservation easements to CAW to help meet the goal of acquiring 1,500 acres over the next decade, selling at least the amount of land as is currently condemned in Critical Area A.

- (3) Major landowners must conduct pilot studies to determine if and how Best Management Practices can be used in Critical Area A pursuant to the Performance Standards Approach. Such pilot studies must show that BMPs can be used effectively. A BMP design manual must be developed before a performance standards approach can be implemented. The pilot studies are anticipated to last four years.
- (4) If the pilot projects are unsuccessful, CAW should not be penalized by having to pay a higher price for land in four years. Major landowners should agree to a purchase price before initiation of the pilot projects.
- (5) Adequate administrative, regulatory, enforcement, and governance structures must be in place for the watershed. These structures comprise the recommendations in this section of the Management Plan, including local watershed protection ordinances, wastewater RME, and sedimentation and erosion control ordinances, or the equivalent protection through other ordinances and authorities.

With a proviso of, “if development is allowed in Critical Area A,” Trevor next reviewed the build-out conditions under the Conservation Design Approach and the Performance Standards Approach for that area.

In the Draft Plan, Tetra Tech recommended that the Board consider Critical Area A in the context of the whole watershed, consider overall risk reduction to the water supply, and consider how well each option meets the goals and objectives.

Trevor added that if the five conditions are met, Tetra Tech believes that the “very limited development” option better meets the goals and objectives and better reduces overall risks to the water supply.

Trevor then introduced Jim McKenzie, Director of Metroplan, to provide an overview of the draft legal settlement agreements. Several PAC members had requested that Mr. McKenzie make the presentation to the PAC that he made to the CAW Board on November 9, 2006.

Overview and Discussion of the Draft Legal Settlement Agreements

Mr. McKenzie provided an overview of the draft legal settlement agreement for Mr. Ferguson and his associates for the Northshore Land, including the draft Memorandum of Understanding with CAW, the Conservation Easement, and the Declaration of Restrictive Covenants. He then reviewed the draft legal settle agreement for Deltic Timber.

Mr. McKenzie concluded his presentation by saying that the proposals will settle the Waterview Estates and the Deltic Timber law suits and voluntarily implement the Watershed Management Plan on approximately 30,000 acres in the watershed. He said he also believed the two largest landowners in the watershed would shift from opponents to proponents of local regulation to implement the watershed management plan.

PAC Discussion

A number of questions and issues were raised by PAC members:

- ATV use in the ditch will be problematic. (McKenzie Response: ATV use will likely be an issue regardless of whether the ditch is built or not.)
- Once you allow land alteration (such as the ditch), you open up the option to other landowners. (McKenzie Response: The water transfer must be evaluated. CAW is sponsoring a study to evaluate the potential impacts from a water supply or water quantity perspective. Local commissions would need to look at the proposed development, and make sure the water diversion is not having an impact on downstream landowners.)

- The contract (legal settlement agreement) is being drawn up for a fixed point in time. The Management Plan is to be a living document. Since the agreements cover most of the land in Critical Area B, there would only be a small part of Critical Area B that would be left where requirements could be changed in the future. If Perry County does not adopt the plan or ordinance, this small part of Critical Area B could be squeezed. (McKenzie Response: The contracts could be changed upon agreement by both parties. Also, in the future, local governments could adopt more stringent regulations than what is in the current proposed plan and agreement; then the stricter regulations would apply to all watershed land in their jurisdiction and the landowners would have to comply with the stricter local regulations regardless of development agreements with CAW. If local governments adopt less strict regulations than what is in the plan and the development agreements, then the development agreement conditions apply to the development.)
- The best deal is “don’t approve this until we have an oversight commission,” not going back to each local government for ordinance adoption. Why approve something before you have oversight locked in? This PAC member believes that major landowners may go to the legislature to lobby for oversight authority if their development depends on having an oversight commission in place. (McKenzie Response: A regional authority will be difficult to form; it will take a lot of time if successful. You have a bird in the hand now—being able to implement the plan on 30,000 acres immediately. You should act on that while continuing to work toward local ordinances and for a regional authority.)
- The Conservation Easement is not reflective of what the draft plan calls for. (McKenzie Response: The draft conservation easement is based on the conservation easement for the Alotian Golf Course. It is only a draft that is to be modified. The MOU, conservation easement, and restrictive covenants, once approved, could all serve as templates for other landowners to use.)
- Concerned that if MOU’s are approved first, local governments will think that the problem has been solved. (McKenzie Response: Believe that the landowners will support local regulation to create a level playing field in the watershed.)
- Construction of the ditch could cause a lot of sediment runoff. Will need 24-hour onsite inspection to ensure this does not happen.
- These legal settlement agreements accomplish more immediately than we thought we could accomplish in many years time. We should thank Metroplan and Mr. McKenzie for helping to draft these documents.

Mr. McKenzie stressed that the MOUs are draft and are being thoroughly reviewed by CAW and their attorneys and by Tetra Tech. He said that he would be willing to present the proposals to any group represented on the PAC or discuss issues with individual PAC members. He said that the intent of his work on the agreements was to honor the work of the PAC and of Tetra Tech.

Action Items

Kimberly said that the action items on the night’s agenda were recommendations that Tetra Tech had made in the Draft Plan and on which Tetra Tech needs to be able to convey the PAC’s level of support to the CAW Board. She said that many are “carryover” items from previous meetings and discussion. For each item, Kimberly reviewed the background and issues and Tetra Tech’s recommendation. The PAC then discussed the item and took action on it.

Action Item 1: Allowing performance standards approach in CAW development agreements.**Background/Issues**

The Draft Plan recommends that if landowners and CAW wish to enter into a development agreement, CAW staff may use the Menu of Development Options found in Appendix A of the Draft Plan. This Menu is more complex than what is recommended for the local ordinances, but allows more flexibility. Tetra Tech has indicated that it believes the parties to a development agreement would be able to understand the Menu options, and that the Menu, while somewhat more complex to administer than the large lot and cluster options recommended for the plan, is significantly less complex to administer than the performance standards approach.

If CAW allows the performance standards approach in development agreements—in the absence of local ordinances—then CAW would be the party responsible for establishing adequate oversight and enforcement of such agreements. This would include, but not be limited to, hiring and training adequate engineering and inspections staff, developing a BMP design manual as well as a sedimentation and erosion control manual, and conducting plan review and site inspections. If the local governments adopt the performance standards approach, CAW may support local governments in building such oversight and enforcement capacity. However, in the absence of local ordinances, Kimberly said that CAW would be solely responsible for building such capacity.

A final issue is that development agreements are contracts and as such can only be enforced through the courts. Unlike local governments, CAW would not have other remedies for noncompliance such as fines, stop work orders, revocation of a permit, etc., which tend to be timelier than court orders. It is true that both the Menu and the Performance Standards approach would rely on courts for enforcement. However, more can “fail” under the performance standards approach due to the use of engineered BMPs to help meet the performance standards.

It is important to note that development agreements have worked well in other communities. They can be very detailed and can be crafted to require the management plan recommendations.

PAC Discussion

Allowing development agreements would “open up a can of worms.” To enforce these agreements, CAW must go to Court. There could be untold damage before being settled.

Action

CAW should determine if it is in the best interest of implementing this management plan to allow the performance standards approach in the development agreements, if it can develop legally binding agreements with strong consequences for non-compliance, and if it is willing to assume the responsibilities of oversight and enforcement.

PAC Vote:	Supported	13
	Opposed	4
	Abstained	1

Action Item 2: Three Additional Conditions for Allowing Limited Development in Critical Area A.

Major landowners agree to:

- (2a) Abide by management plan requirements not just in Critical Area A but also on land owned in remainder of watershed in order to reduce overall risks to the lake and intake.
- (2b) Identify developable land outside of Critical Area A to help meet CAW land acquisition needs for offsetting exemptions.

- (2c) Settle on a purchase price before initiation of pilot projects so as to not penalize CAW for allowing pilot projects to move forward.

Kimberly reminded the group that at its September 2006 meeting, the Policy Advisory Council voted to delay decision on development in Critical Area A until the pilot projects are completed. At that time, the PAC recommended that it be determined if stormwater BMPs can be used effectively in the watershed (based on the results of the pilot projects) and if adequate governance and oversight is in place to allow development. These are two of the conditions required in Critical Area A Option 2, allowing limited development.

She said that in drafting the management plan, Tetra Tech added three additional conditions to allowing development in Critical Area A. These recommendations were based on the technical analysis, on actions taken by the PAC regarding offsetting the exemptions, and on meeting the overall goals and objectives. The three conditions and rationale were explained as follows.

Issues – Action Item (2a)

Abide by management plan requirements not just in Critical Area A but also on land owned in the remainder of watershed in order to reduce overall risks to the lake and intake.

Background

The watershed analysis has shown that if development is allowed in Critical Area A, the risks from Critical Area A will be increased as will the management burden. Kimberly said that there is no benefit to CAW for allowing development in Critical Area A unless, by doing so, it can achieve a “tradeoff” to increase the certainty of plan implementation and reduce the risk in the rest of the watershed. Therefore, the Draft Plan recommends that a first condition of allowing development in Critical Area A be that both major landowners agree to follow the watershed plan requirements on all land they own in the watershed, and in the event they sell their property, they must bind all future owners of such land to do the same.

The two major landowners in Critical Area A own 41 percent of the developable land in the rest of the watershed, including 37 percent in Perry County. Given the uncertainty about adoption of local ordinances, an agreement to abide by the watershed plan on such land would help ensure implementation of the plan in the majority of the watershed. By increasing certainty and reducing risk in the rest of the watershed for loading of Total Phosphorus, Total Suspended Solids, Total Organic Carbon (TOC) and Fecal Coliform Bacteria, CAW better increases the certainty of meeting the long-term lake targets for Chlorophyll *a*, Turbidity, TOC and Fecal Coliform (or pathogens). Again, this latter water quality benefit is the tradeoff for increased risk of temporary increased loads of sediment and temporary increases in turbidity that may result from construction activity in Critical Area A, and the risk associated with the limited amount of development proposed under this option. Kimberly said that one of the main reasons that Tetra Tech added this condition is that it helps meet the overarching goal of balancing the burdens and benefits of the watershed protection.

PAC Discussion

- Would this apply to short- or long-term development? (Tt Response: It would apply to any development that occurs in Critical Area A.)
- This is a “no brainer.” This is the only reason to have the development option in Critical Area A.
- Wouldn't any landowner in Critical Area B or the Upper Watershed Area have to abide by the watershed plan anyway? (Tt Response: No. Not until a local government adopts an ordinance to implement the plan.)

- I would have more confidence in voting if I knew how the MOU's were going to be written. (Tt Response: The Watershed Plan would/should drive the contents of the MOU.)
- If we vote for this, are we voting for development in Critical Area A? (Tt Response: What this group voted for in September was to delay the decision on no development versus development in Critical Area A based on two conditions: pilot projects results and adequate oversight. Now we are asking that you add three additional conditions to those two conditions. You are essentially saying if CAW decides to allow limited development in Critical Area A, this condition and the other four conditions would first have to be met.
- This is not a vote on the contract/settlement agreement with the developer; it is a vote on the conditions required in the Plan.
- The large landowners will work toward adoption of local ordinances so everyone will be playing by the same rules.

Action

If the CAW Board votes to allow development in Critical Area A, CAW should require, as a prerequisite condition, that the major landowners in Critical Area A agree to abide by management plan requirements not just in Critical Area A but also on land owned in the remainder of the watershed in order to reduce overall risks to the lake and intake.

PAC Vote: **Consensus**

Abstained 2

Issues – Action Item 2(b)

Identify developable land outside of Critical Area A to help meet CAW land acquisition needs for offsetting exemptions.

Background

The Policy Advisory Council and Tetra Tech have recommended that existing landowners be provided two exemptions: for making additions to existing structures and for creating small subdivisions to address legacy issues. The Policy Advisory Council and Tetra Tech have also recommended that CAW purchase 1,500 acres of conservation land to offset the additional pollution caused by these exemptions.

CAW has condemned 90 percent of Critical Area A, or about 1,000 acres, which could help meet this requirement. These acres meet the criteria that utilities commonly use to prioritize land for acquisition. Kimberly said that for CAW to “turn back” this condemned land and allow development in Critical Area A, the Draft Plan recommends that the major landowners in Critical Area A work with CAW to identify and obtain land in other parts of the watershed that also meet the land acquisition ranking criteria. The major landowners should sell or donate conservation easements to CAW to help meet the goal of acquiring 1,500 acres over the next decade, selling at least the amount of land as is currently condemned and in litigation in Critical Area A.

PAC Discussion

- The 1,500 acres would be land set aside in permanent conservation; CAW and the developers must identify land that otherwise would be developed.
- Do both CAW and the landowner have to agree on the land, or does the landowner just have the say? (Tt Response: Both parties have to agree.)

- Is this a one for one acreage? (Tt Response: Yes, this is a one for one acre credit. But there will be criteria for targeting highest priority land.)
- Would very steep slopes be acquired? (Tt Response: To get “credit” to count toward the 1,500 acres, CAW would need to acquire land that is less than 25 percent slope, i.e., developable land. Steeply sloped land could be acquired; it just would not count as credit toward the 1,500 acres of mitigation land needed.)

Action

If the CAW Board votes to allow development in Critical Area A, CAW should require, as a prerequisite condition that the two major landowners identify developable lands in Critical Area B and the Upper Watershed Area that they are willing to sell or donate, through fee simple or conservation easement, to provide mitigation for the landowner exemptions. The major landowners should make available at least the number of acres which are under condemnation in Critical Area A.

PAC Vote: **Consensus**

Abstained 2

Issues Action Item 2(c)

Settle on purchase price before initiation of pilot projects so as to not penalize CAW for allowing pilot projects to move forward.

There is no benefit to CAW if CAW allows pilot projects to move forward and delays a decision on development in Critical Area A for approximately four years. However, there would likely be a cost burden in that the cost of the land will have appreciated. Tetra Tech added this condition—that CAW not be penalized by the cost increase—not only because the League of Women Voters raised the concern at the September 21, 2006 PAC meeting, but because it helps meet the goal of balancing the burdens and benefits of water quality protection.

PAC Discussion

Land prices could also fall. If that was the case, CAW would end up paying more for the land than its market value. In other words, the price uncertainty can cut both ways.

Action

If the CAW Board votes to allow development in Critical Area A, CAW should require, as a prerequisite condition that the major landowners settle on a purchase price before initiation of pilot projects so as to not penalize CAW for allowing pilot projects to move forward.

PAC Vote: **Consensus**

Abstain: 1

Action Item 3: *Allowing non-engineering/land conservation approach in Critical Area A in the short-term.*

Issues

At its September 2006 meeting, the Policy Advisory Council voted to delay decision on development in Critical Area A until the pilot projects are completed. At that time, it recommended that it be determined if stormwater BMPs can be used effectively in the watershed (based on the results of the pilot projects) and if adequate governance and oversight is in place to allow development. However a separate motion was made to discuss allowance of development in the short-term (while the pilot projects are being

conducted) under the non-engineering/land conservation approach. This approach requires 92 percent undisturbed open space, minimum 20-acre lots, and maximum 2.2 percent imperviousness. Due to lack of time, the discussion was delayed to a future meeting.

If CAW moves to allow development in Critical Area A, and the area is built out according to this non-engineering/land conservation approach, it would result in an estimated 68 additional houses. Tetra Tech believes that such development poses a very manageable risk to the lake and intake area.

PAC Discussion

- How many homes could be built? (Tt Response: 68 additional homes could be built.)
- This action particularly helps the “little guy.”
- Is there any connection between this type of development and the development that requires pilot projects? (Tt Response: No. Under this approach, there must be a minimum 20 acres per house, 92 percent of the land must be left undisturbed, and a maximum 2.2 percent imperviousness is allowed. Tetra Tech believes that this poses a minimal and manageable risk to the water supply.)
- How would the wastewater be handled? (Tt Response: Non-discharging systems must be used.)

Action

If the CAW Board votes to follow Option 2 (allowing limited development in Critical Area A), allow landowners to use the non-engineering/land conservation approach for Critical Area A in the short-term while the pilot studies are performed.

PAC Vote: **Consensus**

Other Issues Raised by the PAC

- A member said that she did not believe that enforcement and oversight was adequately addressed in the Plan. She said it will not be effective unless adequately enforced. (Tt Response: Tetra Tech agrees that enforcement is critical. However, there is a degree to which oversight and enforcement can be addressed in the management plan, while a part needs to be addressed in the implementation strategy and during implementation itself. Tetra Tech believes that this Draft Management Plan emphasizes the issue more than most other plans.)
- Why did Mr. McKenzie give a December 31 deadline for reaching agreement with the two landowners? We should not have legal settlement agreements before we have a Plan adopted. (CAW Representative: It is anticipated that the CAW Board will give conditional approval of the watershed management plan in December (conditioned on actions taken and revisions requested at the December board meeting). We will ask Tetra Tech to create a final plan based on the Board’s December discussion, and then the Board will take action on the final plan.) (Mr. McKenzie: Recommended finalizing the legal settlement agreement before the legislative session begins. No one wants the issue to come back to the legislature. The “deadline” was not a take it or leave it deadline.) (Deltic Representative: Deltic has no intent to push legislation on this issue.)
- The MOU needs to be aligned with the existing plan, and with the plan as it changes. (CAW Representative: We will ask the staff to develop recommendations on how to do this.)
- The MOU’s Conservation Easement does not reflect the Plan’s stipulation of what is allowed in “undisturbed open space,” i.e., conservation area. (Tt Response: The Conservation Easements will need to be revised to reflect the activities allowed as shown on pages 3-2 and 3-3 of the Draft Plan.)

- Since we are recommending that local ordinances be adopted within two years, and since the legislature meets every two years, shouldn't the PAC members begin pursuing the Watershed Management Authority now at the same time the ordinances are being pursued? Some legislators have said that 2 years is enough time to push through the needed legislation. (Tt Response: We recommend that you follow the PAC's recommendation in the Plan: explore the option with the local governments in the watershed. Build support among them. Figure out together what the Authority would look like and do. Then go to the legislature together to request enabling legislation. If that kind of work is being done, both the ordinance and the watershed authority efforts could proceed in tandem.)

Next Steps

Trevor said that Tetra Tech would still be accepting comments through November 27. A revised draft plan will be sent to the CAW Board one week before its December 14 meeting. Until that time, Tetra Tech will be:

- Revising the Plan.
- Summarizing comments received on the Draft Plan and Tetra Tech's responses.
- Identifying where the CAW needs to make a final decision, including describing the positions of the PAC and Tetra Tech's recommendations.

On December 14, Tetra Tech will meet with the Board to discuss the Plan and to achieve conditional approval. Based on that discussion, we will finalize language of the Plan and send the revised version back to the Board for final approval.

After that, Tetra Tech will turn to the Implementation Strategy, including the timing of actions, who needs to be involved, and key steps that need to be taken. Trevor estimated that it would take at minimum through February to complete the Draft Implementation Strategy.

There will be at least one additional meeting of the PAC, most likely in March. At that time, the PAC can see the progress of the implementation strategy. If there is anything else that needs to be done, Tetra Tech will confer with the CAW Board.

One PAC member asked if Tetra Tech would like the PAC subcommittee's input on the Watershed Authority. Trevor said yes, we would like to have the subcommittee's recommendations. Although Tetra Tech would not have the resources to meet with the subcommittee, members could forward their recommendations at any time.

Attachment A – Attendance List

Lake Maumelle Policy Advisory Council Meeting Attendance Date: November 15, 2006

	MEMBER NAME	DESIGNATION	REPRESENTING
P	Herb Dicker	PRIMARY	Ratepayers (Little Rock Neighborhoods)
P	Kathy Wells	ALTERNATE	Ratepayers (Little Rock Neighborhoods)
P	Sue Corker	PRIMARY	Ratepayers (North Little Rock Neighborhoods)
NP	Jack Finnegan	ALTERNATE	Ratepayers (North Little Rock Neighborhoods)
P	Mike Simpson	PRIMARY	Ratepayers – Jacksonville Water Works (Master-metered Customers)
NP	Robert Stout	ALTERNATE	Ratepayers – North Pulaski Water Works (Master-metered Customers)
P	Tony Kendall	PRIMARY	Central Arkansas Water Commission (Chair)
NP	Jane Dickey	ALTERNATE	Central Arkansas Water Commission (Member)
P	Roby Robertson, Ph.D.	ALTERNATE	Central Arkansas Water Commission (Vice Chair)
P	Ruth Bell	PRIMARY	Community (League of Women Voters of Pulaski County)
P	Kathleen Oleson	ALTERNATE	Community (League of Women Voters of Pulaski County)
NP	Steve Owen	PRIMARY	Community (North Little Rock Chamber of Commerce)
NP	James Dietz	ALTERNATE	Community (North Little Rock Chamber of Commerce)
P	Randy Wilbourn	PRIMARY	Community (Little Rock Regional Chamber of Commerce)
P	Jay Cheshshir	ALTERNATE	Community (Little Rock Regional Chamber of Commerce)
P	Kate Althoff	PRIMARY	Community (Citizens Protecting Maumelle Watershed)
P	Barry Haas	ALTERNATE	Community (Citizens Protecting Maumelle Watershed)
P	Alderman Neil Bryant	PRIMARY	Elected Official (North Little Rock City Council)
NP	City Director Stacy Hurst	PRIMARY	Elected Official (City Director, City of Little Rock)
P	Justice Pat Dicker	PRIMARY	Elected Official (Pulaski County Quorum Court)
P	Justice Harrison Jones	PRIMARY	Elected Official (Perry County Quorum Court)
NP	Justice Charlie Clements	ALTERNATE	Elected Official (Perry County Quorum Court)
P	Glen Hooks	PRIMARY	Environmental (Sierra Club)
NP	Dale Ingram	ALTERNATE	Environmental (Sierra Club)
P	Kevin Pierson	PRIMARY	Environmental (Audubon Arkansas)
NP	Stephanie Hymel	ALTERNATE	Environmental (Audubon Arkansas)
P	Charles Nestrud	PRIMARY	Property Owners (Deltic Timber Corporation)
P	Larry Hedrick	PRIMARY	Property Owners (U.S. Forest Service)
P	Jeff D. Allison	PRIMARY	Property Owners – Water Association within Watershed
P	John M. Bentley, III	PRIMARY	Property Owners – within Watershed – Western Watershed
P	Ray Vogelwohl	ALTERNATE	Property Owners – within Watershed – Western Watershed

